

RIGHT OF ENTRY AGREEMENT  
BETWEEN THE  
BNSF RAILWAY COMPANY  
AND THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



This Right of Entry Agreement ("Agreement"), made as of this 6<sup>th</sup> day of August, 2009 ("Effective Date"), is entered into by and between the BNSF RAILWAY COMPANY, a Delaware corporation ("BNSF"), and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, an agency of the United States Government ("EPA").

1. RIGHT OF ENTRY: BNSF hereby knowingly consents to and permits EPA, its agents, employees, authorized representatives, contractors, and subcontractors, to enter upon and perform environmental investigations and studies upon certain property owned by BNSF. The environmental investigations and studies to be performed may include:

- (a) Drilling of soil and groundwater test borings;
- (b) Installation and maintenance of groundwater monitoring wells along with the sampling, testing and uses related thereto;
- (c) Collecting subsurface soil and groundwater samples for analytical testing;
- (d) Surveying of probe and monitoring well locations; and
- (e) Abandoning wells in accordance with applicable law.

2. DESCRIPTION OF PROPERTY: The Property subject to this Agreement is shown on the attached drawings marked Exhibits "A" and "B" and made a part hereof, situated in Beatrice, Gage County, Nebraska, Line Segment 0152, Mile Post 30.49, and also known as Lots 742, Block 72, Original Town, now City of Beatrice, Gage County, Nebraska ("Premises").

3. CONTRACTOR AND AUTHORIZED REPRESENTATIVES: For purposes of this Agreement, any and all references to EPA or the United States Government shall include EPA's officers, agents, employees, contractors, subcontractors and others acting under the apparent authority of EPA or the United States Government. EPA agrees to provide a copy of this Agreement to its contractors, subcontractors, and authorized representatives and to direct or otherwise require them to comply with all provisions contained herein.

4. PRIOR NOTIFICATION TO BNSF REPRESENTATIVE: EPA shall notify BNSF's Roadmaster, at 1605 Linden Avenue, Crete, NE 68333,

telephone (402) 8265941 (Office) or (402) 223-7847 (Cell), and BNSF's Remediation Manager, Greg Jeffries, at 80 44<sup>th</sup> Avenue NE, Minneapolis, MN 55421-2599, telephone (612) 7823490, at least three (3) business days prior to entering the Premises. After completion of its work, EPA shall notify BNSF in writing that its work has been completed.

5. **AVAILABILITY OF SAMPLING RESULTS:** EPA agrees to provide BNSF with the results of analyses of samples taken from the Premises and copies of reports relating to such samples or to contaminants found upon the Premises upon written request.
6. **LIMITATION OF LIABILITY:** EPA's liability, as an agency of the United States Government, for damages to the Premises or for injuries to persons upon the Premises shall be governed by the Federal Tort Claims Act and the Federal Employees Compensation Act (28 U.S.C. 2671 et seq.; 5 U.S.C. 8108 et seq.; 31 U.S.C. 240 et seq.).
7. **RESTORATION OF PROPERTY:** If any action of EPA's agents, employees, authorized representatives, contractors, or subcontractors results in damage to the Premises, EPA will, at its option, either repair such damage or make an appropriate offer of compensation to BNSF. In no event shall such repair or offer of compensation exceed the fair market value of the fee interest of the Premises at the time immediately preceding the damage. EPA's liability under this clause may not exceed appropriations available for such purpose, and nothing in this document is intended to imply that Congress will at a later date make appropriations available to meet a fiscal deficiency. The provisions of this section are without prejudice to any rights that BNSF may have under applicable law to make a claim or seek recovery of funds from an alternative source within the United States Government, or to seek damages for matters not addressed by this section.
8. **NOTICES:** Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be delivered by a reputable overnight courier, or delivered by certified mail, return receipt requested and deposited in the U.S. Mail, postage prepaid. Notices shall be deemed received at the earlier of actual receipt or one business day after deposit with an overnight courier as evidenced by a receipt of deposit or three business days following deposit in the U.S. Mail. Notices shall be directed to the parties at their respective addresses shown below, or at such other address as either party may, from time to time, specify in writing to the other in the manner described above:

For BNSF:

Jones Lang LaSalle Global Services RR, Inc.  
3017 Lou Menk Drive, Suite 100  
Fort Worth, Texas 76131

Attn: Licenses/Permits

BNSF Railway Company  
2500 Lou Menk Dr. - AOB3  
Fort Worth, Texas 76131  
Attn: Senior Manager Real Estate

With a copy to: BNSF Remediation Manager  
Greg Jeffries  
80 44<sup>th</sup> Ave. NE  
Minneapolis, MN 55421-2599

For EPA: Kevin Larson  
Superfund Division  
U.S. EPA, Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

9. **HEALTH & SAFETY:** EPA agrees that it shall take no action that will create a risk to individuals that are present upon the Premises and that it shall conduct its activities in compliance with applicable health and safety laws. EPA agrees that it will also require its agents, authorized representatives, contractors, and subcontractors to conduct their activities in compliance with applicable health and safety laws. Prior to commencing any work on the Premises, EPA shall complete the safety training program made available to EPA at the Internet website [www.contractororientation.com](http://www.contractororientation.com).
10. **ENVIRONMENTAL COMPLIANCE:** EPA shall conduct its activities in accordance with applicable federal, state, and local environmental laws and regulations, and shall require its agents, authorized representatives, contractors, and subcontractors to conduct their activities in compliance with applicable environmental laws and regulations. EPA shall ensure that samples taken from the Premises for the purposes of analysis are subsequently disposed of in accordance with legally applicable regulations and EPA protocols.
11. **SUBSURFACE INSTALLATIONS:** BNSF has advised EPA that there may be subsurface installations of various types at the Premises and that the EPA should explore the proposed location for any subsurface work which might adversely affect underground utilities or BNSF underground structures with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface. Prior to performing any hand-auguring which might adversely affect underground utilities or BNSF underground structures, EPA will notify appropriate persons to obtain utility and

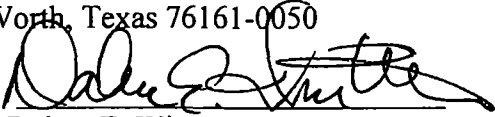
underground structure locations. Upon EPA's request, BNSF shall provide information it has in its possession concerning the approximate location of BNSF's underground utilities and structures on the Premises. BNSF does not warrant the accuracy or completeness of information related to subsurface conditions.

12. **NON-INTERFERENCE WITH RAILROAD ACTIVITIES:** EPA's access rights under this Agreement are non-exclusive. No work to be performed by EPA shall interfere with the constant, continuous, and uninterrupted use of tracks, property, and facilities of BNSF, its tenants, licensees or other authorized entities unless permitted or otherwise authorized under this Agreement or authorized in advance by BNSF's representative. EPA's equipment and materials shall be kept at least twenty-five (25) feet away from the center line of BNSF's nearest track, and that there shall be no vehicle crossings of BNSF's track except at existing public crossings.
14. **LIMITATION AND SUBORDINATION OF RIGHTS GRANTED:** The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of BNSF to use and maintain the Premises, including the right and power of the BNSF to construct, maintain, repair, renew, use, operate, change, modify, or relocate railroad tracks, roadway signals, communication, fiber optic and other wire-lines, pipelines and other facilities upon, along, or across any and all parts of the Premises, all or any of which may be freely done at anytime or times by BNSF without liability to EPA, its agents, employees, authorized representatives, contractors, and/or subcontractors, or any other party, for compensation or damages. This Agreement is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Premises, and others), and the right of BNSF to renew or extend the same. This Agreement is made without covenant of title or for quiet enjoyment.
15. **MECHANICS LIENS:** EPA shall not create, permit, or allow mechanics or materialmen liens of any kind or nature to be created or enforced against the Premises in connection with any work to be performed under this Agreement.
16. **TERM OF AGREEMENT:** This Agreement shall take effect on the Effective Date and shall continue until completion of the aforementioned investigations by EPA, subject to prior termination as hereinafter described.
17. **TERMINATION:** This Agreement may be terminated by either party upon thirty (30) day written notice to the other party.
18. **AUTHORITY TO EXECUTE:** The undersigned individuals represent that each has the authority to bind its principal to the terms and conditions stated herein.
19. **NO RECORDING:** It is understood and agreed that this Agreement shall not be

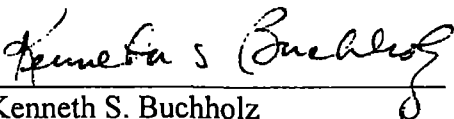
recorded in the local real property records.

BNSF RAILWAY COMPANY

P. O. Box 961050  
Fort Worth, Texas 76161-0050

By:   
Dalen. E. Wintermute  
Manager, Land Revenue & Management

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 7

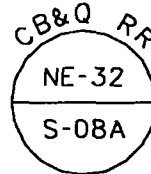
By:   
Kenneth S. Buchholz  
Emergency Response & Removal North  
Branch Superfund Division

## EXHIBIT "A"

ATTACHED TO CONTRACT BETWEEN  
BNSF RAILWAY COMPANY  
AND

BLACK &amp; VEATCH

SCALE: 1 IN. = 200 FT.  
NEBRASKA DIV.  
BEATRICE SUBDIV. L.S. 0152  
DATE 03/11/2008  
REV. DATE 04/30/2008



SECTION: 33  
TOWNSHIP: 4N  
RANGE: 6E  
MERIDIAN: 6PM



## DESCRIPTION:

A PARCEL OF LAND CONTAINING A TOTAL OF 49,420 SQ. FT. (1.135 A.C.)  
MORE OR LESS SHOWN SHADED TO BE USED TO EVALUATE SOIL AND  
GROUNDWATER CONDITIONS.

AT BEATRICE  
COUNTY OF GAGE

STATE OF NE

JLG

MAP REF. S53597